IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1506 of 2002

Rangaraj @ Mysooran
@ Pathirappan .. Appellant

-Vs-

State by Inspector of Police
Karamadai Police Station
Cr.No.126 of 1996 .. Respondent

This criminal appeal is preferred under S. 374 of The Code of Criminal Procedure against the judgment of the Additional Sessions Court Fast Track Court No.4, Coimbatore at Thiruppur in S.C.No.332 of 1999 dated 16.5.2002.

!For Appellant : Mr.K.V.Shanmughanathan

^For Respondent : Mr.V.Jaya Prakash Narayanan
Government Advocate (Crl. Side)

:JUDGMENT

The sole accused before the trial Court, who stood charged, tried and found guilty under Ss 417 and 306 of the Indian Penal Code and sentenced to undergo 9 months R.I. and to pay a fine of Rs.1,000/-, in default of which to undergo 2 months R.I. under S.417 and sentenced to undergo 9 years R.I. and to pay a fine of Rs.4,000/-, in default of which to undergo one year R.I. under S.306, has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

(a) The deceased Kalamani was the daughter of P.W.1 Vellingiri and P.W.2 Marammal. P.W.3 Rajammal and P.W.4 Palanisamy are her sister and brother respectively, while P.W.6 Rajendran and P.W.7 Pettaiyan are her brothers-in-law. P.W.5 was a village, who belonging to the same place. The accused was living with his uncle one Karaiyan whose house was situate abutting the house of the deceased. The deceased Kalamani and the accused belonged to the same community. For a period of two years prior to April 1996, they had love affair. The accused promised her to marry, and on that fond hope and believing the same, they had sexual intercourse on various occasions, which resulted in the pregnancy of Kalamani. On coming to know about the same, the deceased asked the accused for the early marriage, to

which course he flatly refused. Apart from the same, at the relevant time, attempts were made for the negotiation of the marriage of the appellant/accused with some other girl. On those circumstances and on the abetment that was made, she committed suicide by hanging herself on 13.4.96. P.W.1 on coming to know about the same, proceeded to the Karamadai Police Station and gave Ex.P1 complaint, on the strength of which P.W.9 Jayaraj, Head Constable, attached to the said Police Station, registered a case on 14.4.96 at 9.15 A.M. in Crime No.126/96 under S.174 of Cr.P.C. Ex.P4 printed F.I.R. was despatched to the Court concerned. P.W.9 took up the investigation, proceeded to the site of occurrence, made an inspection and prepared Ex.P3 observation m ahazar in the presence of the witnesses and Ex.P5 rough sketch. M.O.1, the rope, used by the deceased for committing suicide, was recovered from the place of occurrence in the presence of the witnesses under Ex.P2 mahazar. P.W.9 conducted inquest on the dead body of Kalamani in the presence of the witnesses and panchayatars, prepared Ex.P6 inquest report and sent the dead body for postmortem to the Government Hospital, Mettupalayam.

(b) P.W.10 Dr.Palanisamy, attached to the Government Hospital, Mettupalayam at that time, conducted autopsy on the dead body of Kalamani and noticed the following injuries.

External Injury:

Rope mark seen over the front of neck above the hyoid bone, it encircle the neck upto back of head (Occipital region).

Internal Injury:

On dissection of rope mark - blood clot seen over the sub cutaneous tissue. Hyoid bone intact. Trachea and larynx normal.

P.W.10 Doctor has issued Ex.P7 postmortem certificate and has opined that the deceased died of suicide.

(c) P.W.11 K.Subramanian, Inspector of Police, took up further investigation and recorded the statements of the witnesses including P.W.8 head constable and P.W.10 postmortem doctor. A requisition was given to the Judicial Magistrate to alter the Section from S.174 Cr.P.C. to S.306 of I.P.C. in Crime No.126/96. On 18.4.96 at about 12.00 hours, the Investigation Officer arrested the accused and remanded him to judicial custody. On completion of the investigation, he laid the charge sheet under Ss 417 and 306 of I.P.C. against the appellant/ accused.

3. In order to prove the charges levelled against the appellant/ accused, the prosecution examined 11 witnesses and marked 7 exhibits and 1 material object. After the evidence of the prosecution was over, the accused was questioned under S.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which the accused flatly denied as false. No defence witness was examined. On consideration of the rival submissions and the available materials, the lower Court found him guilty under Ss 417 and 306 of IPC and sentenced him to undergo imprisonment as stated above. Aggrieved appellant/accused has brought forth this appeal.

4. Arguing for the appellant with vigour and vehemence, the learned Counsel made the following submissions:

The prosecution has not brought forth even an iota of evidence either direct or circumstantial to show that a demand emanated from the deceased demanding the appellant/accused to marry her and that there was refusal on the part of the appellant to comply with such a request, and hence, the trial Court should have found that he was not responsible in any way for the

commission of the suicide by the deceased. There was no evidence adduced by the prosecution to hold that the appellant had intimate relationship with the deceased. The evidence of P.Ws.3 and 4 was only to the effect that they had seen the accused and the deceased engaged in chatting with each other. The deceased was lacking in character. Even according to the parents of the deceased, she was moving with several persons, and thus, she would have committed suicide, because she became pregnant as a result of her association with somebody else, for which the appellant/accused cannot be made responsible. In the absence of any evidence as to the love affair between the deceased and the appellant, the lower Court should not have found him guilty or that there was misrepresentation on his part or that he has abetted the commission of suicide, and in view of the same, the case of the prosecution should have been rejected by the lower Court. Therefore, the appellant is entitled for an acquittal in the hands of this Court.

5. Countering to the above contentions, the learned Government Advocate (Criminal Side) would submit that it is true that P.Ws.1 and 2 have not spoken about the close relationship between the accused and the deceased, but P.W.3 has categorically spoken to the fact that he has seen both of them moving each other in both their fields, and in the instant case, it has been proved that she was pregnant at the time of occurrence, and the same has also been proved through the medical evidence; that her death by hanging is also proved; that from the evidence, it is clear that at the time of her committing suicide, attempts were make for making arrangements for the marriage of the accused with some other girl, and the same would clearly indicate that it was nothing but an abetment made; that so far as the abetment made by the accused, which led her to commit suicide is concerned, no one could be examined or no direct evidence could be adduced before a Court of law, and the only two persons to whom the knowledge could be attributed, are the deceased and the accused, and the bare denial of the accused should not be accepted; that from the circumstances available, it would be very clear that there was abetment of her committing suicide as required by S.306 of I.P.C., and hence, the lower Court was perfectly correct in finding the accused guilty.

6. Admittedly, the deceased Kalamani was residing with her parents in a place, which is situated adjacent to the place, where the accused was residing. The factum of death of Kalamani by hanging on 13.4.96 was proved through the medical evidence adduced by P.W.9 Postmortem Doctor and his certificate. This fact is also not disputed by the appellant/accused. From the evidence of the witnesses, it would be clear that Kalamani was pregnant at the time of the commission of suicide. This fact is also proved through the evidence of P.W.9 Doctor, who conducted the postmortem, and according to his evidence, she was pregnant by 22 weeks. Though P.Ws.1 and 2 have not spoken to the fact that they have seen the accused and the deceased moving closely, the evidence of P.W.3 is clear to the fact that the deceased and the accused were closely moving with each other, and they were found in both their fields, and thus, there is evidence as to the close movement between them. One pointing circumstance is that the deceased Kalamani had committed suicide at the house of one Karaiyan, where the accused was residing. Both these proved facts would go to show that the accused was responsible for her pregnancy. One added fact was that at the relevant time, there was an attempt made for the marriage of the accused with some other girl. When it came to the knowledge of the deceased, it is quite natural for her to demand the

appellant/accused for their marriage. It could be clearly inferred, under the circumstances, that only on the refusal of the same by the accused, there was no option for the lady, who became pregnant, than to commit suicide.

7. Normally, in a case like this, direct evidence as to the reason for commission of suicide on account of the act of the accused at the relevant time, cannot be expected. The abetment need not necessarily be by uttering words to commit suicide. In the case on hand, the refusal of the accused to marry the victim, who became pregnant on his false promise of marriage, can only be an instigation and has to be termed as abetment, as contemplated under S.306 of I.P.C. The Court is able to see, as culled out from the circumstances, that the mensrea necessary for the abetment, as enshrined under S.306 of I.P.C., is present in the instant case, and thus, though the prosecution has not brought forth the act of the accused in making the abetment at the time of the commission of suicide by direct evidence, the circumstances would clearly indicate that it was the said abetment, which made the deceased Kalamani to commit suicide. Here is a case where she was made pregnant by false promise of marrying her and then by making arrangement to marry somebody and by refusing to marry her, and all put together would necessarily attract Ss 417 and 306 of I.P.C. Therefore the lower Court was perfectly correct in finding the accused guilty under those provisions of law.

8. Coming to the question of sentence, the lower Court has awarded 9 years R.I. for the offence under S.306 of I.P.C. and 9 months R.I. for the offence under S.417 of I.P.C., both along with fine. The Court is of the considered view that reduction of punishment from 9 years R.I. under S.306 of I.P.C. to 5 years R.I. would meet the ends of justice.

9. Therefore, the sentence of 9 years R.I. imposed by the lower Court on the appellant under S.306 I.P.C. alone is modified, and the appellant/accused shall undergo R.I. for 5 (five) years under S.306. In all other respects, the judgment of the lower Court is confirmed. With the above modification, this criminal appeal is dismissed.

Index: Yes
Internet: Yes

To:

1) The Additional Sessions Judge (Fast Track Court 4)
Coimbatore at Thiruppur.
2) The Principal District and Sessions Judge, Coimbatore.
3) The Superintendent, Central Prison, Coimbatore.
4) The Officer-in-Charge, Sub Jail, Coimbatore.
5) The Public Prosecutor, High Court, Madras.
6) The D.I.G. of Police, Chennai 4. 7) Mr.V.Jaya Prakash Narayanan,
Government Advocate
(Crl. Side), High Court, Madras.
8) The Inspector of Police, Karamadai Police Station.

nsv/